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ALLEN D. HERTZ
12784 TULIPWOOD CIRCLE
BOCA RATON, FL 33428

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DEC 29 2006

OFFICE OF PETITIONS

In re Application of
Reuben Hertz
Application No. 09/939,865
Filed: August 27, 2001
Attorney Docket No.

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ON PETITION

This is a decision on the petition under 37 CFR 1.181 filed on September 5, 2006, to withdraw the holding of abandonment.

The petition is **DISMISSED**.

The application became abandoned on July 29, 2006, after no response was received to the Notice of Allowance and Issue Fee Due mailed April 28, 2006, which set a statutory period for reply of three-months from its mailing date. No response was received within the allowable period, and the application became abandoned on July 29, 2006. A Notice of Abandonment was mailed on August 30, 2006.

In the instant petition, petitioner maintains that the issue fee and publication fee were timely paid, but were directed to an incorrect application because petitioner used an issue fee transmittal form belonging to another patent application.

A review of the evidence submitted with the instant petition reveals that the issue fee transmittal form filed to pay the issue and publication fees did not contain any identifier that would have allowed the Office to match the payments with the correct application. The application is correctly noted as abandoned because the neither the issue fee payment or the publication fee were noted as being received in the patent application 09/939,865 prior to the expiration of the three month statutory period and applicant provided no reasonable way for the Office to associate the payments made with the correct application. The petition is dismissed accordingly.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee (\$1500.00 for a large entity and \$750.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

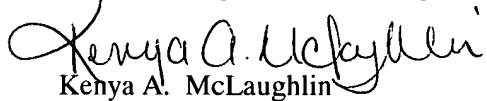
The issue fee payment and publication fee payment that is currently credited to patent application 10/704,517 will be transferred to patent application 09/939,865.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions